

## REMARKS

Applicant requests reconsideration of the above-identified application in light of the amendments and remarks described herein. Claims 17-24 have been canceled, and new Claims 25-31 have been added. Therefore, Claims 1-7, 11-14, and 25-31 are pending in this application.

Claims 1-7, 11-14, 16, and 22-24 have been rejected. In that regard, Claims 22 and 24 stand rejected under 35 U.S.C. § 102(b), and Claims 1-7, 11-14, 16, and 23 stand rejected under 35 U.S.C. § 103(a).

Applicant respectfully submits that all claims are now in condition for allowance. Accordingly, applicant requests reconsideration and allowance of all claims.

### Constructive Election of Species

The Office Action states that newly submitted Claims 17-21 are directed to an invention that is independent or distinct from the invention originally claimed. Applicant acknowledges that Claims 1-7, 11-14, 16, and 22-24 have been constructively elected in the Office Action and Claims 17-21 have been withdrawn from consideration by the Examiner. Claims 17-21 have been canceled.

### Comment Regarding the Specification

The Office Action has noted the proper language and format for an abstract of the disclosure, specifically, that terms such as "comprising" should be avoided. Applicant has amended the abstract to delete the language "comprising" to address this comment.

### Claim Rejections Under 35 U.S.C. § 102(b)

Claims 22 and 24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,568,866, issued to Grosskopf et al. (hereinafter "Grosskopf"). In addition, Claims 22 and 24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent

No. 4,804,101, issued to Heath (hereinafter "Heath"). In view of the cancellation of Claims 22 and 24, these rejections are now moot.

Rejection of Claims 1-7 and 11 Under 35 U.S.C. § 103(a)

Claims 1-7 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,808,072, issued to Snedeker et al. (hereinafter "Snedeker") in view of Grosskopf. Applicant respectfully disagrees.

To establish a case of obviousness, the prior art references must teach or suggest all of the claim limitations; there must be some suggestion or motivation, either in the references or in the knowledge of one skilled in the art, to modify the references or to combine the reference teachings; and there must be a reasonable expectation of success. The motivation-to-combine requirement prevents proscribed hindsight reasoning when determining obviousness. *See Alza Corp. v. Mylan Laboratories, Inc.*, 464 F.3d 1286, 1290 (Fed. Cir. 2006) (citing *In re Kahn*, 441 F.3d 977, 985 (Fed. Cir. 2006), and *Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1321-24 (Fed. Cir. 2005)). Applicant submits that the claims at issue are not obvious over the cited references because there is no suggestion or motivation to modify the references or to combine the reference teachings.

Claim 1 recites a food container assembly, includes a product container for a food product, a dental cleaning device carried by the product container, and a food product at least partially disposed within the product container.

Snedeker generally describes a snack food assembly including a snack food bag, snack food, and a moist towelette in a sealed enclosure that is coupled to the snack food bag. As described in Snedeker, the purpose of coupling a moist towelette to a snack food bag is to help users "maintain clean fingers and hands" after consuming a snack food (Snedeker, Col. 6, line 64, to Col. 8, line 37).

Grosskopf generally describes a sample package for carrying fluid or powder samples, as well as dental floss, granules, and tablets (Grosskopf, Col. 1, lines 44-49, and Col. 3, lines 49-58), which can be attached by adhesive to a card (such as a mailing card) or product packaging. The Examiner states that the product packaging of Grosskopf is inherently capable of carrying food. Applicant respectfully disagrees.

The Office Action states that Snedeker discloses all of the features of Claim 1, except that the moistened towelette may be replaced by a dental cleaning device, such as dental floss. The Office Action cites Grosskopf as teaching attaching dental floss to a package. The Office Action concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the moist towelette taught by Snedeker with the dental cleaning device of Grosskopf so that the consumer might clean his or her teeth after consuming a product. Applicant respectfully disagrees.

Applicant respectfully submits that there is no suggestion or motivation to combine the cited references to arrive at the product container recited in Claim 1. Neither reference contemplates that a user of the product (*i.e.*, the sample card of Grosskopf or the snack food package of Snedeker) would get food stuck in his or her teeth, requiring a dental cleaning device to dislodge the food or clean the teeth. In that regard, Grosskopf does not contemplate using the sample packages in conjunction with consuming food for user convenience. To the contrary, the sole purpose of the Grosskopf sample packages is for the promotion of products and product sampling (*see, e.g.*, Grosskopf, Col. 1, lines 14-22). In fact, Grosskopf teaches away from the claim language because it would not be sensible to include food with a sample package adhered to a mailing card or other packaging, as such food would spoil in the mail or on the magazine rack.

While Snedeker may contemplate dirty hands as a result of eating snack food, Snedeker does not contemplate that the user would get snack food stuck in his or her teeth. Therefore, applicant respectfully submits that the combination of these references to arrive at the rejection is impermissible hindsight reconstruction.

For at least these reasons, applicant respectfully submits that Claims 1-7 and 11 are allowable over the cited references Grosskopf and Snedeker, whether cited alone or in combination. Accordingly applicant respectfully requests withdrawal of the rejections to these claims.

Rejection of Claims 12-14, 16, and 23 Under 35 U.S.C. § 103(a)

Claims 12-14, 16, and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Snedeker in view of Grosskopf, and further in view of U.S. Patent No. 5,524,764, issued to Kaufman et al. (hereinafter "Kaufman"). In view of the cancellation of Claim 23, this rejection is now moot. Applicant respectfully disagrees with the rejection of Claims 12-14 and 16.

Kaufman generally describes a compact portable package 36 containing dental hygiene items for convenient placement, for example, in a wallet 38.

For at least the same reasons as discussed above with regard to the rejections of Claims 1-7 and 11, applicant respectfully submits that dependent Claims 12-14 and 16 are also allowable over the cited references, whether cited alone or in any combination. Accordingly applicant respectfully requests withdrawal of the rejections to these claims.

New Claims 25-31

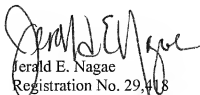
New Claims 25-31 have been added. Applicant submits that these new claims do not present any new subject matter and are in condition for allowance.

### CONCLUSION

In view of the foregoing amendments and remarks, applicant respectfully submits that the present application is in condition for allowance. The Examiner is invited to contact the undersigned with any remaining questions or concerns.

Respectfully submitted,

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